

KING DRUG COMPANY OF FLORENCE, INC., <u>et al.</u> , Plaintiffs, v. CEPHALON, INC., <u>et al.</u> , Defendants.	CIVIL ACTION No. 2:06-cv-1797
VISTA HEALTHPLAN, INC., <u>et al.</u> , Plaintiffs, v. CEPHALON, INC., <u>et al.</u> , Defendants.	CIVIL ACTION No. 2:06-cv-1833
APOTEX, INC., Plaintiff, v. CEPHALON, INC., <u>et al.</u> , Defendants.	CIVIL ACTION No. 2:06-cv-2768
FEDERAL TRADE COMMISSION, Plaintiff, v. CEPHALON, INC., Defendant.	CIVIL ACTION No. 2:08-cv-2141

AMENDED PRETRIAL SCHEDULING ORDER

AND NOW, this 22nd day of October, 2013, it is hereby **ORDERED** that:

1. The deadlines set forth in the August 15, 2013 pretrial scheduling order are **VACATED**.
2. All supplemental fact discovery must be completed by **November 25, 2013**. The scope of supplemental fact discovery may include:
 - a. Updated sales data for Provigil, Nuvigil and generic modafinil products;
 - b. Updated transactional data regarding purchases of Provigil and generic modafinil products by Direct Purchaser Plaintiffs;
 - c. Updated plan documents regarding the End Payor Plaintiffs addressing Provigil or generic modafinil products;
 - d. Updated discovery related to regulatory review and approval of modafinil Abbreviated New Drug Applications submitted by Apotex, Inc., or any of the Generic Defendants;
 - e. Updated financial payments and performance under the agreements at issue;
3. For purposes of supplemental fact discovery, depositions are limited to one seven-hour deposition of a corporate representative witness pursuant to Federal Rule of Civil Procedure 30(b)(6) per party or non-party.
4. Any supplemental expert reports a party wishes to rely upon are due by **December 9, 2013**. Supplemental expert reports may include:
 - a. Updates made necessary by supplemental fact discovery conducted pursuant to Paragraph Two;

- b. Analyses of monetary and non-monetary remedies to account for changed factual circumstances or the standard recently set forth by the United States Supreme Court in Federal Trade Commission v. Actavis, Inc., 133 S.Ct. 2223 (2013).
 - c. A substitute expert report for the one previously submitted by Plaintiffs' expert, Jacques Warcoin.
- 5. Responses to supplemental expert reports are due by **January 6, 2014**.
- 6. All expert discovery, including depositions, shall be completed by **February 10, 2014**.
- 7. Any motions for summary judgment, including "issue preclusion" or collateral estoppel motions, which do not rely upon supplemental discovery permitted by this Order shall be filed on or before **September 20, 2013**.
 - a. Responses to such motions shall be filed on or before **November 18, 2013**.
 - b. Replies to such motions shall be filed on or before **December 9, 2013**.
- 8. All other motions for summary judgment, as well as any Daubert motions, shall be filed on or before **February 24, 2014**.
 - a. Responses to such motions shall be filed on or before **March 17, 2014**
 - b. Replies to such motions shall be filed on or before **March 31, 2014**.
- 9. Class certification motions in Vista Healthplan, Inc., et al., Civ. No. 06-1833, and King Drug Co. of Florence, Inc., et al., Civ. No. 06-1797, shall be filed on or before **April 21, 2014**.
 - a. Responses to such motions shall be filed on or before **May 12, 2014**.
 - b. Replies to such motions shall be filed on or before **May 26, 2014**.
- 10. These matters are referred to Magistrate Judge David R. Strawbridge for possible

settlement. Magistrate Judge Strawbridge will contact counsel to recommence that process.

11. A further scheduling order, which will include a firm trial date, will be issued following the Court's rulings on motions for summary judgment, Daubert motions and class certification motions.

BY THE COURT:

/s/ Mitchell S. Goldberg

Mitchell S. Goldberg, J.